

Office of the Presiding Officer
Military Commission

26 September 2005

This document has been approved by both the Presiding Officer as a Presiding Officer Memorandum, and by the Chief Clerk of Military Commissions in the form he deems appropriate.

SUBJECT: POM 13 - 1, Records of Trial and Session Transcripts

This POM supersedes POM #13 dated NOV 22, 2004.

1. References:

- a. Military Commission Order #1, 30 August 2005.
- b. Appointing Authority Memorandum, Subject: Duties and Responsibilities of Chief Clerk of Military Commission, 30 June 2005.
- c. Appointing Authority Memorandum, Subject: Duties and Responsibilities of Chief Clerk of Military Commissions-Records, Proceedings and Allied Papers, September 20, 2005.
- d. Presiding Officer Memoranda #14-1, Qualifications of Translators / Interpreters and Detecting Possible Errors or Incorrect Translation / Interpretation During Commission Trials, current version.
- e. Presiding Officer Memoranda #8-1, Trial Exhibits, current edition.

2. Definitions:

a. *Authenticated record of trial under the provisions of reference a, paragraph 6H(1).* Under reference 1a, the authenticated record of trial includes only the transcripts of the proceedings and exhibits admitted during the trial. A sample authentication page is attached as Enclosure 1.

b. *Record of Commission trial proceedings (Reference 1 c.)* A “record of Commission trial proceedings” consists of the record of trial plus additional exhibits to include all Review Exhibits marked by the Presiding Officer (or with his permission,) and prosecution and defense exhibits offered but not admitted. Under the provisions of reference c, the Chief Clerk of Military Commissions (CCMC) may supplement the record of proceedings with certain allied papers.

c. *Session record of proceedings, reference 1a, paragraph 4A(5)(f).* Transcripts of proceedings of individual or time-related sessions of a certain case, will be authenticated by the Presiding Officer and forwarded to the Appointing Authority as soon as possible upon the completion of a given session. A sample authentication page is attached as Enclosure 2.

d. *Authenticated record of a post-trial proceeding under the provisions of reference 1a, paragraph 6H(3).* A complete record of all proceedings, that have been authenticated by the Presiding Officer, of any Commission proceedings in the case that occurs after the Presiding Officer has authenticated the record of trial under the provisions of MCO #1, paragraph 6H(1).

e. *Session transcripts.* The transcript of a portion of an unauthenticated record of trial that reflects the proceedings of a session or sessions of the Commission. There are two types of session transcripts:

(1) *Draft session transcript.* A session transcript that has been reviewed by the Presiding Officer and offered to counsel for comment or correction in accordance with this POM.

(2) *Final session transcript.* A draft session transcript that has been reviewed by counsel within the time frames, and under the conditions, established by this POM, and the Presiding Officer has resolved errata and “significant translation errors (if any), submitted by counsel. This transcript will be authenticated by the Presiding Officer to create the session record of proceedings (Paragraph 1c, above).

f. *Commission translator.* A translator charged with the responsibility to translate into English what is said in another language for the benefit of Commission participants, or to translate for a non-English speaking Commission participant what is spoken in a language the defendant, witness, or other participant does not speak. *See* reference 1d.

g. *Significant translation error.* *See* the definition at paragraph 4d below, and reference 1d.

3. With the assistance of the CCMC, the Assistant will provide draft session transcripts to the Presiding Officer, the prosecution, the defense counsel, and the CCMC. Final session transcripts will be provided to the same persons as drafts were provided. Counsel will use these transcripts solely as an internal reference and to reflect errata and significant translation errors in accordance with this POM and references 1b and 1d. Counsel shall not loan, share, transmit, copy, or otherwise disclose or show to any other person or entity any portion of any draft or final session transcript for any other purpose. The CCMC is responsible for release of transcripts for posting on the Department of Defense website, and to other non-litigant requestors. *See* reference 1b.

4. Review of unclassified, draft session transcripts by counsel.

a. Within ten days of service of a draft session transcript where a Commission Translator was not used, the lead counsel for both sides (or a counsel designated by the lead counsel) shall provide an errata sheet in electronic form to the Presiding Officer and the Assistant indicating by page and line number any significant errors in the draft session transcript. *See* enclosure 3 for the errata sheet to be used.

b. Within 15 days of service of a draft session transcript where a Commission Translator was used, the lead counsel for both sides (or a counsel designated by the lead counsel) shall

provide an errata sheet in electronic form to the Presiding Officer and the Assistant indicating by page and line number and using the errata sheet at enclosure 4:

(1) Any significant errors in the draft session transcript.

(2) Any significant translation errors, the correct translation, how and why the counsel believes the translation was in error, and the necessary relief or correction required, and

(3) A certificate by counsel that the significant translation error did not become known until obtaining the draft session transcript. If that is not the case, then counsel will state why the significant translation error was not raised at an earlier time as required by paragraphs 4 and 5, reference d.

c. Failure to provide an errata sheet, or obtain an extension of time to submit the same from the Presiding Officer, shall indicate that the counsel has no errata to offer and that there are no significant translation errors.

d. The Presiding Officer may use the translation verification procedure in paragraph 6, reference d when a significant translation error is noted.

e. Other duties, responsibilities, and procedures to report, document, and process significant translation errors as provided by reference d are incorporated herein.

5. Review of classified, draft session transcripts by counsel. Review of classified, draft session transcripts shall be done in the same fashion as unclassified draft session transcripts except the session transcript shall be served upon counsel in writing, and the errata or significant translation errors, if any, shall be provided to the Assistant and Presiding Officer in written form according to the instructions provided when a classified draft session transcript is served on counsel. The services of the CCMC may be used in such instances to serve such transcripts on counsel to ensure no breaches of security.

6. Electronic format for records and session transcripts.

a. Records and session transcripts shall be in the format established by reference c.

b. The pagination on draft session transcripts, final session transcripts, and the authenticated records may differ when transcripts are collated. When referring to a page or line number in a draft or final session transcript, counsel should be careful to indicate whether the transcript was a draft or final session transcript.

7. Custody and control of exhibits. During sessions of the Commission, unclassified exhibits shall be maintained for the Presiding Officer by the Commissions Trial Clerk in coordination with the CCMC. When the Commission is not in session, these exhibits shall be maintained for the Presiding Officer by the CCMC. Classified exhibits shall be maintained for the Presiding Officer by that person or those persons designated by the CCMC.

Approved by:

Peter E. Brownback III
COL, JA, USA
Presiding Officer

M. Harvey
Chief Clerk of Military Commissions

4 Enclosures

1. Authentication page for ROT (see para 2a.)
2. Authentication page for draft session transcript per (see para 2e(1)).
3. Errata sheet – other than significant translation errors.
4. Format to submit significant translation errors.

**AUTHENTICATION OF
COMMISSION TRIAL PROCEEDINGS**

in the case of:

United States v. Tom Allen Smith
a/k/a Steven Allen Smith
a/k/a Robert Allen Smith

(as indicated on the Charge Sheet)

This is to certify that the Pages _____ through _____ are an accurate and verbatim transcript of the proceedings in the above styled case.

Name
Rank
Presiding Officer

Date

**AUTHENTICATION OF
FINAL SESSION TRANSCRIPT**

in the case of:

United States v. Tom Allen Smith
a/k/a Steven Allen Smith
a/k/a Robert Allen Smith

(as indicated on the Charge Sheet)

This is to certify that the Pages _____ through _____ are an accurate and verbatim transcript of the proceedings held in the above-styled case on _____.

Name
Rank
Presiding Officer

Date

ERRATA SHEET BY THE (PROSECUTION) (DEFENSE)
Other than Significant Translation Errors

US v. _____, Session Transcript of _____, Page ____ of ____ Pages

Counsel preparing this errata sheet: _____

[illegible]

ERRATA SHEET BY THE (PROSECUTION) (DEFENSE)
IF Significant Translation Errors.
(See POM# 11.)

US v. _____, Session Transcript of _____, Page ____ of ____ Pages

Counsel preparing this errata sheet: _____

Page	Line(s)	Change from	Change to	Action by the PO	
				Approved	Not approved
How does counsel know the translation was incorrect? (If the same source throughout this errata sheet, the source need only be stated once.)					
Relief requested other than to change the translation as shown above.					
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